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# No. 482

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

UNITED STATES OF AMERICA,
*Appellant,*

vs.

HORACE JOHNSON, ET AL.,
*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

## BRIEF FOR THE APPELLEES

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## BRIEF FOR THE APPELLEES

### OPENING STATEMENT

The recitations in the brief of the United States as to the opinion below, the jurisdiction of this Court, the statutory provisions involved, question presented and statement of the case are generally accepted, except, we think it is appropriate to include under the caption "Statutory Provisions Involved", Section 203 of the Civil Rights Act of 1964 (42 U.S.C. 2000a-2), which provides:

"No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 2000a or 2000a-1 of this title, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 2000a or 2000a-1 of this title, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 2000a or 2000a-1 of this title. Pub.L. 88-352, Title II, § 203, July 2, 1964, 78 Stat. 244."

## SUMMARY OF ARGUMENT

The plain, unambiguous language of Section 207(b) requires no interpretation or construction, merely application to the facts of the present case. A statute is open to construction, not as a matter of course, but only where the language used requires interpretation because of its ambiguity, conflicting connotations or obscure meaning. Section 207(b) plainly states that the remedies for enforcement of Title II rights shall be the civil remedies provided by Title II. The statute expresses the legislative intent that criminal prosecution shall be unavailable to the United States for violations of Title II prohibitions in such clear and explicit terms that there is no occasion to resort to the rules of statutory interpretation, leaving only the necessity to apply the plain and obvious meaning of the language used.

The intent of Congress, as expressed in Section 207(b), is manifest. In the first instance, the statute provides that the civil remedies shall be exclusive in so far as the United States is concerned. The statute then continues and provides that any other federal or state remedy may be avail-

able to individuals or to state and local governments, but not to the United States. Thus, the express language of the statute affirmatively and negatively provides that the United States may resort to no other remedy than civil, thereby precluding prosecution under 18 U.S.C. 241.

The legislative history is in accord with this interpretation. Not only does the legislative history evidence a clear intent that criminal prosecution not be utilized by the United States, there is no indication in the history that criminal prosecution under 18 U.S.C. 241 and 242, or otherwise, should be available to the United States. With reference to an earlier version of the Act, the Attorney General testified before a legislative committee to the effect that 18 U.S.C. 241 and 242 would be applicable to violations of Title II prohibitions. Thereafter, by amendment, Section 207(b) was added to the Act. An attempt to amend the Act by eliminating Section 207(b) for the purpose of substituting criminal sanctions was soundly defeated.

Even should the statute be subject to judicial construction, the only legal, logical and practical result which could be reached under the applicable rules would be that Congress intended enforcement of the Act only through the civil process provided by the Act. The language of the statute is transparent and its meaning is clear.

In the event the sanctions imposed by the Act are not sufficient to fully implement it for the purpose of assuring compliance, the Courts are without power to supply the deficit. In substance, the arguments urged by the United States addressed themselves to Congress and not to the Courts.

## ARGUMENT

### The Exclusive Remedy of the United States for the Vindication or Enforcement of Rights Accorded Persons, Including Negro Citizens, under the Public Accommodations Section of the Civil Rights Act of 1964, Public Law 88-352, Title II (42 U.S.C. 2000a, et seq.), Are Remedies Provided Therein, and Do Not Include Prosecution under 18 U.S.C. 241.

The long and tedious congressional history of Title II of the Civil Rights Act of 1964 and the well-organized opposition to its enactment, perhaps explains why the above statement is true. The clear language of the "exclusive remedy" provision, Section 207(b), leaves no doubt as to the intent of Congress. This provision is so lucid and unambiguous that it requires no construction or interpretation. A simple reading of the section discloses its manifest meaning.

Congress, after creating and defining the rights and privileges with respect to the use of public accommodations on a non-discriminatory basis, affirmatively prohibited the deprivation of such rights directly or indirectly. It went further and prohibited, substantially in the language of 18 U.S.C. 241, the act of or attempt to intimidate, threaten or coerce any person with the purpose of interfering with the exercise of such rights and privileges and from punishing any person for having exercised such rights and privileges. This is immediately followed by a remedy for the violation of such prohibitions. In this situation, Congress then specified in no uncertain terms that the remedy thus provided would be the exclusive remedy available to the United States. However, it left to the individuals, the states and local agencies any other remedies available under any *other* federal or state law not inconsistent with Title II.

As if to obviate the possibility of any misconstruction of its intent, Congress twice provided in Section 207(b) that the statutory remedies created by Title II would be the exclusive means available to the United States for enforcing the rights it had created in that Title and in vindicating violations of its prohibitions. First, it affirmatively stated that the provided remedies were exclusive. Second, it negatively stated the same principle in reserving to individuals and to state and local agencies, but not to the United States, any other consistent remedy available under federal or state law. If the remedy of prosecution under 18 U.S.C. 241 were intended to remain available to the United States, the limitation expressed by the statute, that is, "any individual or State of local agency", would not have been inserted. More than this, if the contention here urged is not valid, Section 207(b) has no meaning and must be treated as inert verbiage. This result cannot reasonably be attributed to Congress.

It is argued by the United States that the word "enforcing" is a word of limitation and that it aptly applies only to proprietors of public accommodation establishments, as opposed to outsiders. This argument is consistent with its contention that the exclusive remedies provision does not mean what it says, but *sub silentio*, contains an unwritten and unexpressed distinction between the two classes of individuals—proprietors and outsiders. Under this asserted argument, we wonder where the line of demarcation is drawn. If only proprietors are included in one group, we would assume that the employees, agents, waitresses, suppliers, building owners and other persons in similar positions would be deemed outsiders, subject to prosecution under 18 U.S.C. 241. It follows logically from that argument, that even a proprietor who, for any reason, including an intentional, bad-faith violation of the

statutory prohibitions, by himself or through his agents or outsiders, engages in prohibited conduct, is immune from prosecution, but those who associate with him in such conduct are not.

In footnote 9, page 16, of its brief, the United States says that this is not so, that Section 207(b) "need not" be construed to insulate a proprietor if he engages in a "violent conspiracy" to violate Title II of the Act. To adopt this argument would be to add yet additional language to the statute. In other words, the United States, in substance, contends that the statute does not mean what it says, but, in fact, means that the exclusive remedy provision relates only to a proprietor of a covered establishment who, in good faith, wishes to test the applicability of Title II to his enterprise.

This Court, then, is asked by the United States to either: rewrite the statute, a function which is exclusively within the powers of Congress; or to disregard it in situations deemed to be violent conspiracies, an alternative which is not judicial, but merely accommodating.

There is yet another reason, perhaps a stronger one, why the argument of the United States fails. Congress fully recognized and specified the evils which it denounced. In Section 203, without exception, it prohibited the deprivation and denial of Title II rights and privileges by *any person*, in good faith or in bad faith, with or without unlawful intent, and in the same breath prohibited any person from interfering with the exercise of the rights and privileges and from inflicting punishment as a result of the exercise of such rights and privileges. Thereafter, it provided civil sanctions only, for violations of this mandate and, by Section 207(b), made these sanctions exclusive. It cannot be realistically argued that Congress

did not intend the obvious result. Resistance to the public accommodations provisions, whether passive or active, violent or non-violent, is clearly to be dealt with within the framework of the Act and not under 18 U.S.C. 241.

Throughout its written argument, the United States has tacitly indicated a distinction between a criminal conspiracy and a violent conspiracy which is criminal. The insertion of the word "violent" in this argument adds nothing in support of the position, but is merely forensic. There is no requirement under either 18 U.S.C. 241 or 42 U.S.C. 2000a-2 (Title II, Section 203 of the Civil Rights Act), that conduct, in order to be unlawful, be violent. Likewise, there is woven into the argument of the United States a suggestion that a distinction should be made between a substantive violation and a conspiratorial violation of the statutory prohibitions. We will not make issue on the question of whether 18 U.S.C. 241 defines a substantive offense—this is immaterial for present purposes. The point is, there is no distinction in Section 207(b) between a substantive offense and a conspiracy. The exclusiveness of the civil remedy relates to all other remedies, save those excepted by the statute.

The two arguments of the United States referred to in the foregoing paragraph are on the collision course, and, as they must, ultimately collide in footnote 9, page 16, of the brief of the United States. We point this out, not by way of criticism, but to show the absence of logic in the position advanced by the United States. The argument falls by its own weight. The only way it can prevail is for Section 207(b) to be ignored or amended to insert exceptions which are not there.

We have hereinbefore answered the argument beginning on page 12 of the brief of the United States, but

now allude to it specifically. It is there argued that the word "exclusive", as used in Section 207(b), is immediately modified by the declaration that the exclusive-remedy clause does not preclude the assertion of "any right based on any other Federal or State law not inconsistent with this title" or prevent the pursuance of "any remedy, civil or criminal, which may be available for the vindication or enforcement of such rights." The quoted extracts are preceded by the words, "any individual or any State or local agency." Thus, as we have shown, the United States is precluded from asserting any other remedy to enforce the rights in question. If this were not so, the United States would have been included in the exception.

Finally, the United States argues at page 17 of its brief that unless it is permitted to utilize 18 U.S.C. 241, it is left without any effective means to protect its interest in the free access of its citizens to public accommodations. This argument may be valid, only time will tell, but it addresses itself to Congress and not to the Courts. In its wisdom, Congress has elected to withhold federal criminal sanctions, leaving available for the purpose of enforcement only those remedies reserved by Section 207(b). In passing, it is appropriate to note that such limitations were not imposed with reference to other rights accorded by the Civil Rights Act of 1964. This selectiveness makes the statutory scheme crystal clear.

## LEGISLATIVE HISTORY

The only references in the legislative history which have been called to our attention, having reference to prosecutions under 18 U.S.C. 241, are found in Senator Humphrey's statement quoted in footnote 12, at page 18 of the brief of the United States, and the testimony of the Attorney General before Sub-Committee No. 5 of the

Committee of the Judiciary, House of Representatives, Part II, pages 1411-13 (June 26, 1963). In his testimony with reference to an earlier version of the bill, prior to the amendment of November 1963, which added Section 207, the Attorney General testified that violations of Title II rights would be subject to prosecution under 18 U.S.C. 241.

With respect to Senator Humphrey's statement, it is to be noted that the Justice Department aided him in his preparation for discussion of Section 207(b). In the discussion, he stated that the exclusive remedy provision was "designed to make clear that a violation of sections 201 and 202 cannot result in criminal prosecution of the violator or in a judgment of money damages against him." We interrupt here to interpolate the observation previously made that the applicable prohibitions relate to all persons alike—proprietors and outsiders. If any exceptions to the statement were intended, this would have been the proper place to articulate them. Instead, the Senator continued to say that the exclusive remedy language was necessary to preclude the contention that violations of Title II rights would result in criminal prosecutions under 18 U.S.C. 241 or 242 or in civil liability under 42 U.S.C. 1983 or 1985. Thus, he stated,

> ". . . the first clause in section [207(b)] simply expresses the intention of Congress that the rights created by Title II may be enforced only as provided in Title II."

Following the above statements, the Senator gave an *example* of an innocent, good-faith proprietor who might violate the mandates of the law without fear of criminal prosecution or a suit for damages. It must be remembered that this was only an example and was not intended, in context, to cover all situations which might arise.

With reference to the testimony of the Attorney General, supra, it is noteworthy that subsequent to the receipt of his opinion that Title II rights were within the purview of 18 U.S.C. 241, as the proposed legislation was then written, the amendment of November 1963, that is, Section 207(b), was included in the Act and was, and is, carried as a part of the Civil Rights Act of 1964. The legislative reasoning and intent thus manifested is too clear to admit of argument.

All of the legislative history of the Act is in accord. Senator Young explained that the enforcement provisions of Title II are based upon the specific prohibition in Section 203 against denying *or interfering* with the right to nondiscriminatory use of facilities covered by the Title. He stated, "In case of a violation, the aggrieved person would be able to sue for an injunction to end the denial *or interference.*" (Emphasis supplied). 110 Cong. Rec. 7384. Senator Magnuson, 110 Cong. Rec. 7409, said:

> ". . . Title II gives no right to damages to the injured party nor does it provide any criminal penalties to those who violate its provisions. The most that can happen to one who violates the law laid down by Title II is that he will receive an order from the Court compelling him to comply with the law he had originally violated."

and again at 110 Cong. Rec. 7410, he fully explained:

> ". . . It is really a moderate title with enforcement limited to injunctive relief against discriminatory practices. . . ."

Senator Kuchel expressed a similar view, 110 Cong. Rec. 6557, observing that the sanctions of Section 207(b) are not as severe as the remedies afforded one aggrieved by similar conduct under the law of his State. Finally, as

reported in the opinion of the trial court, an express amendment to substitute direct criminal proceedings for the civil remedies provided by Title II was soundly defeated. 110 Cong. Rec. 13647.

All in all, the legislative history of the Act teaches nothing more than the plain, unambiguous language of the statute says, whether considered alone or in the context of the Act. It will be remembered that there was much opposition to the enactment of Title II in Congress, so it is not surprising that the end result is somewhat tempered and compromised. If the Act leaves something to be desired, it merely reflects the end result of the efforts, against substantial congressional and public opposition, to produce a public accommodations provision in the Civil Rights Act of 1964.

## CITATION OF AUTHORITIES

Because of the apposition of its text and in order to reduce what we think to be the applicable principles of law to basic summary, we have quoted in footnote, omitting annotations, 50 Am. Jur. 204, Statutes, §225.[1] We think this

1. "A statute is not open to construction as a matter of course. It is open to construction only where the language used in the statute is ambiguous, or will bear two or more constructions, or is of such doubtful or obscure meaning, that reasonable minds might be uncertain or disagree as to its meaning. Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation, and the Court has no right to look for or impose another meaning. In the case of such unambiguity, it is the established policy of the Courts to regard the statute as meaning what it says, and to avoid giving it any other construction than that which its words demand. The plain and obvious meaning of the language used is not only the safest guide to follow in construing it, but it has been presumed conclusively that the clear and explicit terms of a statute expresses the legislative intention, so that such plain and obvious provisions must control. A plain and unambiguous statute is to be applied, and not interpreted, since such a statute speaks for itself, and any attempt to make it clearer is a vain labor, and tends only to obscurity. . . ." 50 Am. Jur. 204, Statutes, §225.

reference most pertinent, particularly in view of the absence of any argument by the United States that the statute is ambiguous, contains conflicting provisions or is in any way obscure in its context. As we understand the basic argument of the United States, it merely asserts that the statute does not, of itself, provide adequate means for effecting the purposes of Title II.[2] If this be so, the remedy is not interpretation of the statute so as to afford a better method of enforcement, but is amendment of the statute.

It is evident from the congressional history of the Act, as recognized by this Court in *Atlanta Motel* v. *United States*, 379 U.S. 241, 248, "remedies are limited to civil actions for preventive relief." From an early date (1804), it has been recognized that a law is the best expositor of itself. *Pennington* v. *Coxe*, 6 U.S. 33. Thus, where the language of a statute is transparent and its meaning clear, there is no room for the office of construction, since there should be no construction where there is nothing to construe. *Lewis* v. *United States*, 92 U.S. 618; *Hudson Distributors, Inc.* v. *Eli Lilly & Co.*, 377 U.S. 386.

Defining crimes and fixing penalties are legislative, not judicial, functions. Even where Congress has exhibited clearly a purpose to proscribe conduct within its power to make criminal, but, because of its failure to clearly define the penalty which attaches, the Courts are without power to supply the deficit. *United States* v. *Evans*, 333 U.S. 483. While we insistently urge that neither

2. At pages 7, 9 and 19 of its brief, the United States submits that the creation of a civil remedy, in the absence of clear congressional intent that it should be an exclusive remedy, is not to be construed as precluding a corresponding criminal sanction and that Section 207(b) "does not in terms bar federal criminal prosecution". The complete answer to these contentions is that Congress, by making the provided civil remedy an exclusive one available to the United States, did express itself clearly on this question and did in terms bar federal criminal prosecution.

crime nor penalty are defined in Title II, proper construction of the Act as a whole demonstrates the intent of Congress to exercise only so much of its power to proscribe and penalize as it thought necessary or deemed advisable in the premises. Thus, under Title VI, Section 601, 42 U.S.C. 2000d, non-discrimination under federally financed projects was decreed, and under Title VII, Sections 703 and 704, 42 U.S.C. 2000e-2 and 2000e-3, certain employment practices were made unlawful, but in those Titles no limitations as to enforcement were made. Perhaps this explains the inclusion of Sections 1102 and 1103, Title XI, codified as 42 U.S.C. 2000h-1 and 2000h-3. This is all to say that the Act is itself discriminatory and demonstrates an intricate statutory scheme to proscribe, enforce and penalize various acts and conduct. In this overall scheme, Congress elected to enforce Title II rights only by civil proceedings.

To give Section 207(b) any meaning other than that urged here would have the effect of treating it as having no meaning, force and effect at all. A statute will not ordinarily be given a construction which makes it wholly redundant or renders it nugatory. *Crowell* v. *Benson*, 285 U.S. 22; *Singer* v. *United States*, 323 U.S. 338. The construction urged by the United States suggests that this result would not follow, as, in reality, it does have meaning as respects a proprietor who in good faith violates the Title II prohibitions, in that it protects him from prosecution under 18 U.S.C. 241. Good-faith violations of constitutional or statutory civil rights do not require such protection, since one may be prosecuted under 18 U.S.C. 241, only when he acts with a specific intent to interfere with such rights. *United States* v. *Guest*, 383 U.S. 745.

While we contend that the statute is consistent with the parallel intent and the apparent purpose, were this

not so, the result would not be altered. It is true that in some instances, in order to avoid an absurdity, hardship or injustice presumably not intended, a construction which carries the real intention may be justified. However, if the intention is clear, it is the duty of the Court to expound the statute as it reads. *Folsom* v. *United States*, 160 U.S. 121.

Again, we observe that the intention of the legislature must govern the interpretation of a statute. It is the legislature and not the Court, which is to define a crime and ordain its punishment. *Morgan* v. *Devine*, 237 U.S. 632. In the present case, Congress evinced its intent to prohibit the defined conduct without designating a violation of the prohibition a crime and without fixing criminal penalties. It was the clear intent of Congress that violations should be prosecuted by civil proceedings only. This intent has been given force and effect by the decision below. That judgment should be affirmed here.

## CONCLUSION

The judgment below, based upon a proper application of statutory construction, law and logic, is correct. It should be affirmed.

Respectfully submitted,

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December, 1967.